

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

<p>KENNYA D. AGNEW,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HENNEPIN COUNTY MEDICAL CENTER, NURSING STAFF OF HENNEPIN COUNTY ADULT DETENTION CENTER, Stephanie, Nurse at the Hennepin County Adult D.O.C., Mary, Nurse at the Hennepin County Adult D.O.C., Judy, Nurse Practitioner @t Hennepin County Adult D.O.C.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 16-cv-1760 (WMW/LIB)</p> <p style="text-align: center;"><b>REPORT AND RECOMMENDATION</b></p>
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This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636; and upon Plaintiff Kenya D. Agnew’s Application to Proceed in District Court Without Prepaying Fees or Costs. Docket No. 2.

Plaintiff commenced this action by filing a Complaint seeking relief under 42 U.S.C. § 1983. He did not pay the filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* (“IFP”). Docket No. 2. The Court ordered Agnew, a prisoner, to pay an initial partial filing fee under 28 U.S.C. 1915(b). After Agnew paid the filing fee, the Court ordered Agnew to file an amended complaint by September 30, 2016, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See*

Fed. R. Civ. P. 41(b). In ordering Agnew to file an amended complaint the Court also highlighted various the various deficiencies in Agnew's Complaint which he needed to address. Docket No. 6.

The deadline by which Agnew was ordered to amend his Complaint has now passed, and Agnew has not filed an amended complaint. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

### **RECOMMENDATION**

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: October 24, 2016

s/Leo I. Brisbois  
LEO I. BRISBOIS  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14

days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.